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Prosecutorial discretion and plea bargaining: is there a jury trial penalty?

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PROSECUTORIAL DISCRETION AND PLEA BARGAINING:
IS THERE A JURY TRIAL PENALTY?

by

GINA HALL

A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Criminal Justice
in the College of Health and Public Affairs
and in The Burnett Honors College
at the University of Central Florida Orlando, Florida

Fall Term 2011

Thesis Chair: Mary Ann Eastep, Ph.D.

ABSTRACT

As the most powerful position of the courtroom workgroup, the prosecutor plays an essential role in the criminal justice system. From the defendant's initial contact with the criminal court process when the prosecutor makes the charging decision, until sentencing when the prosecutor's recommendation guides judicial discretion, prosecutors hold the power to decide a defendant's fate. Despite the parameters that govern their ability to use discretion, the prosecutor still maintains a significant amount of power to influence crucial decisions with regard to the defendant.

The current study addresses the issue of prosecutorial discretion and the ability to mishandle the powers bestowed upon such a powerful position. While prosecutorial discretion has a broad base, the study was narrowed to specifically concentrate on discretion as it impacts plea bargaining and final dispositions. Additionally, an analysis of the data looks at whether or not a defendant faces jury trial penalty for exercising his/her constitutional right to a trial by jury. A statistical comparison was constructed using data collected with respect to specific murder and sexual battery statutes over a 24-month period. Based on the statistical data provided within the study, those individuals who accepted the plea deal offered by the state faced a far less severe punishment than those who opted to go to trial.

DEDICATION

I would like to dedicate this thesis to my family. To my husband Greg, you have always been my number one supporter. Thank you for allowing me to pursue my dreams unconditionally. To my son Nicholas, you are my biggest cheerleader as well as my toughest critic. Thank you for all of your words of encouragement. I love you both! I am eternally grateful for your love, understanding and patience.

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LIST OF NOMENCLATURE¹

ADJUDICATION. The legal process of resolving a dispute; the process of judicially deciding a case.

COURT PLEADING. A formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials or defenses.

DISPOSITION. A final settlement or determination.

DISTRICT ATTORNEY. A public official appointed or elected to represent the state in criminal cases in a particular judicial district.

EXCULPATORY EVIDENCE. Evidence tending to establish a criminal defendant's innocence.

HOMICIDE. The killing of one person by another.

PLEA BARGAIN. A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor. A more lenient sentence or a dismissal of the other charges.

PROSECUTOR. A legal officer who represents the government in criminal proceedings. SEE DISTRICT ATTORNEY.

PROSECUTORIAL DISCRETION. A prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting or not prosecuting, plea bargaining, and recommending a sentence to the court.

¹ All legal definitions are drawn from Black's Law Dictionary.

REASONABLE DOUBT. The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty.

"Beyond a reasonable doubt" is the standard used by a jury to determine whether a criminal defendant is innocent.

SEXUAL BATTERY. The forced penetration of or contact with another's sexual organs or the perpetrator's sexual organs.

CHAPTER 1: INTRODUCTION

In the area of Criminal Justice there are several different roles played by a variety of people. An assumption can be made that these individuals are united under the same belief and desire to ensure justice not only prevails but also prevails in an ethical and humane manner. While there are many individuals who are involved in the process, the main persons involved are the judges, prosecutors and defense attorneys. These individuals comprise a co-dependent group identified as the “courtroom workgroup”. Although each has its own unique purpose to serve, they collectively must put aside their differences to see the case through to a fair and just resolution. (Neubauer & Fradella, 2011)

Despite popular belief, no other position holds as much power as that of the role of the prosecutor. The prosecutor is the “ring master” of the courtroom workgroup. Prosecutors are tasked with great responsibility when it comes to the criminal court process. From the defendant’s initial contact with the criminal court process when the prosecutor makes the charging decision, until sentencing when the prosecutor’s recommendation guides judicial discretion, prosecutors hold the power to decide a defendant's fate.

In the Criminal Justice system, the prosecutor represents the government in all criminal proceedings. There are different “titles” associated with the job of prosecutor depending on which governmental jurisdiction they represent. On the federal level, the prosecutor is referred to as the Attorney General. On a state level, these individuals are termed with some latitude depending on which state they represent. See Table 1, Page 9, for a full listing of designated names of state prosecutors.

The purpose of this thesis is to explore the role of the prosecutor within the judicial system, placing emphasis on their use of discretion. By utilizing their discretion, prosecutors have the ability to exercise their judgment with regard to charging and sentencing decisions. In examining such a role, this research will analyze whether or not the use of broad prosecutorial discretionary powers has the potential of masking unethical practices. While it may not be intentional, the use of discretion can be abused in certain instances. This abuse of power can lead to either the over-prosecution or under-prosecution of a defendant. While I intend to show how the prosecutor can abuse the powers granted, additionally, I will demonstrate how through the use of plea bargaining and other issues the prosecutor can use their discretion to the benefit of the defendant as well.

CHAPTER 2: HISTORICAL FOUNDATION

The American judicial system has roots in English Common Law, which means a general law for the population. Through a series of judge made laws and legal precedents, the legal system in American was developed into what is practiced today. Known as the adversary system, substantive and procedural laws guide the legal system. Under this form of law, the presumption of innocence until proven guilty is the basis. The burden of proof rests exclusively with the prosecution. It is their responsibility to show evidence that the defendant committed the crimes for which s/he was charged beyond a reasonable doubt.

The justice system within the United States functions on a “dual court” system. A dual court system provides a federal court system as well as individual court systems for each of the 50 states and the District of Columbia. Although separate, at some point, both the federal and state laws coincide under the same rules of legal procedure and precedent.

In 1968, Herbert Packer recognized two policy models of the American Criminal Justice system; the crime control model and the due process model. Each model respectively contains both positive and negative attributes. In fact, in comparison, they are “polarities” of one another; neither model in itself is the ideal model in which to base all criminal proceedings. However, with that said each model provides a basis for understanding the methodology of processing cases.

Crime Control Model

The foundation of the Crime Control model relies upon the underlying principle that suppressing criminal conduct will control crime. This theory begins with law enforcement. In

order to suppress criminal activity, laws should be established and enforced on a regular basis. The Crime Control model is similar to that of an assembly line. Working off the presumption of guilt, each case moving through the system in an effort to speed up the process and handle as many cases as possible. (Packer, 1968) Politicians, including elected prosecutors, who scribe to the tenants of the crime control model, are more likely to engage in plea bargaining and other techniques likely to move defendants through the system quickly, even if values supporting due process may be compromised.

Due Process Model

The foundation of the Due Process model relies upon the underlying principle that a suspect's rights supersede their guilt or innocence; U.S. Constitution guarantees such rights. The protection of the suspect's rights supersedes the efficiency of the court system. The Due Process model emphasizes careful consideration with respect to the merits of the individuality of the crime and places more emphasis on rehabilitation versus punishment. (Packer, 1968) While prosecutors who subscribe to a due process model may be more likely to process each individual case more slowly and deliberately, critics would contend that the criminal justice system could not handle the pressure of such individualized justice.

Under each of these models, the prosecutor plays an important role as to how cases flow through the justice system. The Crime Control model operates on the presumption of guilt; therefore, the prosecutor's main objective is to solidify a resolution swiftly. In this situation, the prosecutor utilizes their discretion to the benefit of the justice system. On the contrary, the Due Process model operates on the premise the defendant's rights outweighs swift justice.

Therefore, the prosecutor devotes individual attention to each case to determine, a fair and just resolution.

According to Timothy Lynch, fewer than 10 percent of all trials brought before a jury are tried with the safeguards guaranteed within the U.S. Constitution. These safeguards are expressly written in the fifth and sixth amendments. In the remaining 90 percent of cases, the defendants forgo their constitutional rights afforded to them and plead guilty. (Lynch, 2003)

The use of prosecutorial discretion is arbitrary; dependent upon a number of factors that can vary from prosecutor to prosecutor. Due to the subjective nature of the decision making process, these decisions can become a source of controversy within the public's perception. Whereas some will view a charging decision as soft on crime, others will view the same decision as overcharging. (Kessler & Morrison Piehl, 1997)

Prosecutorial powers are not without restrictions. Over the years, through rulings, the U.S. Supreme Court imposed certain limitations with respect to use of discretion. Such rulings, in combination with the U.S. Constitution have set parameters in which prosecutors must operate within in order to protect the rights of the defendant. (Spohn & Hemmens, 2009)

CHAPTER 3: CITIZEN'S RIGHTS

United States citizens are afforded specific rights to ensure their fair treatment. Outlined within the U.S. Constitution, these rights can only be taken away under extreme, limited circumstances. There are three particular amendments to the Constitution, which specifically address citizen's rights with respect to legal issues; amendments five, six, and eight. (The Bill of Rights, 2011)

Amendment Five

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Within this amendment, there are several protections to the defendant. While they are all important, none is more important than the phrase, “...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...” This protects the defendant from facing prosecution or adjudication twice for the same charges; more commonly referred to as “double jeopardy”. (The Bill of Rights, 2011)

When considering all of the rights of the defendant, double jeopardy is the most powerful. Once a defendant has been adjudicated “not guilty” by the court, they are no longer subject to those same charges; despite any serious legal errors that pertain to their case. The state

does have limited recourse with regard to the appeals process; however, it is limited to questions of law where as the defendant would not be placed in jeopardy. (Neubauer & Fradella, 2011, 2008)

Amendment Six

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.” (The Bill of Rights, 2011)

This amendment is significant in that it protects the defendant’s rights to have his/her case heard in public and confront his/her accusers. It also guarantees the right for a jury to be present. The defendant cannot be forced to give up this right; however, they may voluntarily choose to waive their right. In order for a defendant to give up their right to a jury trial, they must submit a written request to the court. (See Appendix B)

Additionally, this amendment protects the defendant’s right to a speedy trial. Under Florida law, the defendant must be brought to trial within a specified period; unless the defendant chooses to waive his/her right to a speedy trial in writing. The standard time frame is 90 days for a misdemeanor and 175 days for a felony.

As stated in *Dickey v. Florida*, the speedy trial provisions provided by the state and federal provisions are "an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the

possibility that long delay will impair the ability of an accused to defend himself." (Dickey v. Florida, 1970)

Amendment Eight

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” (The Bill of Rights, 2011)

Within this amendment is the protection against extreme sentencing by the state. In layman’s terms, the punishment shall fit the crime. Although the prosecutor has the ability to influence the disposition set forth on the defendant, this protection guards against over punishing the defendant.

In sum, the fifth, sixth, and eighth amendments to the United States Constitution provide for specific rights of the accused. They provide for a basis in which the legal system can operate in a fair manner to any accused individual. Although accused of a crime, defendants have the right to be presumed innocent until adjudicated guilty by the court of law.

CHAPTER 4: THE ROLE OF THE PROSECUTOR

Who is the prosecutor? At first blush, the prosecutor can best be described as the legal representative for the state carries a variety of names dependent upon which geographical location within the United States. (See Table 1)

TABLE 1: Chief Prosecutors Who Handle Felony Cases in State Courts

TITLE	STATES
District Attorney	Alabama, California, Colorado, Georgia, Kansas*, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas*, Wisconsin, Wyoming
County Attorney	Arizona, Iowa, Kansas*, Minnesota, Montana, Nebraska, New Hampshire, Texas*, Utah
State's Attorney	Connecticut, Florida, Illinois, Maryland, North Dakota, South Dakota, Vermont
Prosecuting Attorney	Arkansas, Hawaii, Idaho, Indiana, Michigan, Missouri*, Ohio, Washington, West Virginia
Commonwealth Attorney	Kentucky, Virginia
County Prosecutor	New Jersey
District Attorney General	Tennessee
County and Prosecuting Attorney	Wyoming*
Solicitor	South Carolina
Circuit Attorney	Missouri* (City of St. Louis)
No local prosecutor	Alaska, Delaware, Rhode Island
** Kansas, Missouri, Texas, Wyoming use varying names depending on the jurisdiction (Neubauer & Fradella, 2011, 2008)	

Regardless of the term used, the prosecutor holds the most unique and powerful position of the courtroom workgroup. Prosecutors are the decision makers and decision proposers. In 1940, Supreme Court Justice Robert H. Jackson stated, “The prosecutor has more control over life, liberty and reputation than any other person in America.” (Anderson, 2010) The prosecutor figuratively holds a person’s fate in their hands. While no prosecutor wants to see an innocent person erroneously charged, their role is to seek justice and the law provides them with the necessary tools to do so.

The American Bar Association is the largest voluntary, professional association in the world. A main goal of the association is to provide for a foundation of rules and regulations that provides continuity among its members. As a member of the ABA, members agree to abide by the constitution and bylaws set forth by the association. These rules provide for a high level of ethics within the practice of law. (The American Bar Association, 2011)

Initial Contact

The crime has been committed and law enforcement has made an arrest. After a review of the evidence collected, the prosecutor will make the formal decision as to whether or not the offender will be charged and if so, what charges will s/he will face. At this point, the prosecutor will play an influential role in determining a bail recommendation to the judge.

Nolle Prosequi

The term “nolle prosequi”² is a legal term used by a prosecutor when they utilized their discretion not to pursue the charges against the defendant. The prosecutor may choose to nolle prosequi, or "nolle pros'ed." a case for a variety of reasons. This is a prime example of a

² Definition is drawn from Black’s Law Dictionary.

circumstance where a prosecutor will utilize their discretion in deciding to pursue a case. When a case appears in the State Attorney's office, someone other than the prosecutor documents the initial intake. When the file is transferred to the prosecutor for review, s/he will thoroughly examine the information contained within the in-take document. At this point, the prosecutor has the ability to proceed in one of two ways either dismiss the charges or proceed with a prosecution.

Evidence plays an essential role in determining whether to proceed with a given case. As part of the file review, the prosecutor closely assesses the evidence of the case and determines its validity. It is essential for there to be sufficient evidence against the defendant to proceed with the charges. Prosecutors are ethically obligated to prosecute only those cases in which they find sufficient evidence against the defendant. The prosecutor must prove the charges against the defendant beyond a reasonable doubt. In non-technical language, this can be loosely equated to 99 to 1, the defendant is guilty.

In many cases, witnesses are an intricate part of the case. Unreliable witnesses can do damage to a case if they do not come across as credible. Dependent upon the type of case, the witness may refuse to testify due to the amount of stress and mental trauma such action may cause. Without witness and/or victim testimony, it is possible the prosecutor will be forced to dismiss the charges against the defendant.

An exemplar of this point is demonstrated in the case of the People of Colorado v. Kobe Bryant (2003). Mr. Bryant was charged with C.R.S. 18-3-402 (1)(a),4(a) - (1) one count of "Sexual Assault, Overcome Victim's Will". The case proceeded through the criminal justice system as normal, with attorneys on both sides filing motions, exchanging discovery, attending

hearings, etc. However, on September 1, 2004, District Attorney Mark Hurlbert, filed a motion to dismiss. The reason provided to the court stated: “The people moved to dismiss based upon the fact that the victim is unable to go forward.” District Court Judge Ruckriegle signed the order to dismiss; thus releasing Mr. Bryant of any wrongdoing. (People of the State of Colorado v. Kobe Bean Bryant, 2003)

As a safeguard, the Florida Rule of Criminal Procedure guards against prosecutors utilizing a nolle prosequi in an effort to by-pass the defendant’s right to a speedy trial by dismissing one set of charges and recharging different charges in an attempt to gain more time to prepare their case.

RULE 3.191 - SPEEDY TRIAL subsection (o) Nolle Prosequi; Effect. The intent and effect of this rule shall not be avoided by the state by entering a nolle prosequi to a crime charged and by prosecuting a new crime grounded on the same conduct or criminal episode or otherwise by prosecuting new and different charges based on the same conduct or criminal episode whether or not the pending charge is suspended, continued, or is the subject of entry of a nolle prosequi. (Florida Rules of Criminal Procedure , 2011)

Plea Bargaining

Considered the most important discretionary power a prosecutor has is the ability to offer the defendant an alternative to enduring a formal trial. In an exchange for a guilty plea, the prosecutor will negotiate terms of sentencing and/or dismiss certain charges. This process is known as “plea bargaining”. It is the most widely used method to advance cases through the criminal justice system. Often those that object to plea bargaining, do so on the grounds it

encourages the defendant to forgo their constitutional right to a jury trial. Therefore, it is required for the defendant to sign a court document, in which s/he acknowledges the plea was made in a voluntary manner. (Boykin v. Alabama, 1969) (See Appendix B). Additionally, a defendant may plead guilty without admitting guilt. (North Carolina v. Alford, 1970) An “Alford” plea is a plea entered by the defendant, in which s/he voluntarily accepts a guilty plea while maintaining innocence. It is important to note, the defendant must enter into a plea bargain of his/her own free will. The defendant must understand in full the ramifications of what they are agreeing to as defined by the terms of the agreement. (See Appendix C)

There are three types of plea-bargaining: charge bargaining, count bargaining and sentence bargaining. Although similar in nature, each provides the prosecutor with an unique alternative method of negotiation power depending on the specifics of the case. The prosecutor may choose to utilize one or a combination of bargaining tools during the negotiation process.

Charge bargaining allows the prosecutor the ability to “reduce” the charge the defendant is facing, which will result in a lesser sentence. In other words, the charges are scaled back in terms of seriousness. In the event, the defendant is charged with a lesser charge, it will play a significant role in determining final disposition length. A charge reduction can mean the difference between decades in prison or just a few years.

The case of the State of California v. Andrew Lopez, Jr, provides a classic example of charge bargaining. On June 14, 2009, Andrew Lopez, Jr was charged with murder as well as gun and gang allegations. In total, Lopez, Jr was facing a potential sentence of life plus 50 years. After carefully considering the evidence, the State offered Lopez, Jr a plea bargain. In exchange for a guilty plea, the State would lessen the charges to involuntary manslaughter and weapons

charges. Just over one year after his arrest, Lopez, Jr plead guilty to the reduced charges and was sentenced to a combined total of four years in prison. (Bigham, 2010)

Count bargaining allows the prosecutor the ability to dismiss certain charges and/or counts. Similar to charge bargaining, count bargaining reduces the quantity of charges, thus reducing the possible sentence. The prosecutor has the ability to utilize their discretion when deciding how many counts to charge the defendant. For example; if the defendant has been accused of sexual battery on a child, each occurrence can constitute one count; so if the events took place several times over the course of a year, it is possible, the defendant could be charged with multiple counts. The prosecutor must exercise extreme caution prior to formally charging the defendant on multiple counts. Bound by their ethical obligations, they must be able to prove beyond a reasonable doubt that the defendant did indeed commit the crime for which they are being accused. Therefore, unless they can prove every count, they cannot charge the defendant with multiple counts just to use them as a bargaining tool.

Sentence bargaining is unique in that the original charges still stand, however, the state has agreed to lessen the possible sentence. This type of plea agreement may be used in the cases of a first time offender. In exchange for a guilty plea, the state will recommend probation or other alternative disposition.

The recent case of the State of Connecticut v. Raymond Clark, III provides an example of sentencing bargaining. In New Haven, CT, Raymond Clark, III was accused of felony murder (a Class A felony) and attempted rape (Class B felony) of Annie Le on September 8, 2009. (Buxbaum, 2011) Due to the charges against him, Mr. Clark faced a potential sentence of 80 years for his combined offenses. (McCarthy, 2005) Clark accepted a plea deal in which he

would plead guilty in exchange for a reduced sentence. The final disposition issued a sentence of 44 years on the murder charge and 20 years on the attempted rape charge. By accepting the plea bargain offered by the State, Clark reduced his potential sentence by 22 years. (State of Connecticut v. Raymond Clark, III, 2011) This case is a classic example of Packer's Crime Control model. The date of the offense was September 8, 2009 and the defendant was sentenced on June 3, 2011. While the state did incur the cost of housing Clark in jail while awaiting his trial, by offering a plea bargain, the state actually saved the cost of a trial.

In an effort to provide structure and integrity to the plea bargaining process in Florida, the judge, attorneys on both sides and the defendant are bound by section 3.171. Florida Rules of Criminal Procedure outline the criteria necessary for plea discussions and agreements; similar parameters are set forth in other states. Once all parties have come to a mutual agreement with regard to the terms of the plea deal, the prosecutor will file the necessary paperwork with the court. (See Appendix C) (Florida Rules of Criminal Procedure , 2011) While both the state and the defense are instrumental in negotiating the terms of the plea deal, the ultimate disposition decision lies with the court. The judge has the ability to reject any plea deal in whole or in part.

Sentencing

After a conviction, the prosecutor plays a vital role in determining sentencing. Discretion utilized during the charging process, allows the prosecution the unique ability to manipulate the sentence the defendant will serve in the event of a conviction. While there are specific, sentencing guidelines with respect to the merits of the offense committed, prosecutors have the ability to stack charges or counts to ensure a minimum required sentence are met. Sentencing guidelines are a measure by which prosecutors can determine a fair and just sentence. By

utilizing a “scorecard” chart, the prosecutor applies the various merits of the case compared to the defendant’s past criminal history to calculate the recommended sentence. During the sentencing phase of the criminal process, the prosecutor will recommend to the judge what s/he has determined by the score from the sentencing scorecard. The judge does maintain final disposition with regard to the sentenced handed down; however, in the majority of cases, they will accept the recommendations issued by the state.

A way to ensure stability within the sentencing phase of judicial system, the United States Sentencing Commission devised a worksheet to individualize the offender’s disposition. This worksheet is known as “Rule 3.992(a) Criminal Punishment Code Score sheet”. (see Figure 1)

The worksheet considers several factors prior to producing the appropriate disposition. The worksheet is scored by assigning a numeric value to specific predesigned items. These score values vary depending on the severity of the offense; after which, the score sheet is tallied up to produce a final score. By utilizing the Sentencing Table as a guideline, (see Table 2), the judge utilizes the resulting score to impose a suitable disposition. However, the judge retains the right to waiver from the sentencing guidelines provided s/he makes available a written statement of reason. Plea bargaining plays a vital role in determining sentencing. When the state files the paperwork with the court regarding any plea bargain, they must also provide the sentencing score sheet. When the prosecutor fills out the score sheet, they will populate the form based on the agreed upon details of the negotiation. To clarify, when charge bargaining occurs; the new charge is factored into the score sheet, which will reduce the overall final point value, thus reducing the final disposition.

FIGURE 1: Sentencing Guidelines Score Sheet

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998. Page 1

RULE 3.992(a) CRIMINAL PUNISHMENT CODE SCORE SHEET

1. DATE OF SENTENCE	2. PREPARER'S NAME <input type="checkbox"/> DC <input type="checkbox"/> SAO	3. COUNTY	4. SENTENCING JUDGE	
5. NAME (LAST, FIRST, MLI.)	6. DOB	8. RACE <input type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTHER	10. PRIMARY OFF. DATE	12. PLEA <input type="checkbox"/> Trial <input type="checkbox"/>
	7. DC #	9. GENDER <input type="checkbox"/> M <input type="checkbox"/> F	11. PRIMARY DOCKET #	

I. PRIMARY OFFENSE: If Qualifier, please check ☐ A ☐ S ☐ C ☐ R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
____/____/____	____/____/____	_____ (Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)	_____	
Prior capital felony triples Primary Offense points <input type="checkbox"/>				I. _____

II. ADDITIONAL OFFENSE(S): Supplemental page attached ☐

DOCKET#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
____/____/____	____/____/____	____/____/____	_____ Description _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X _____ = _____	
____/____/____	____/____/____	____/____/____	_____ Description _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X _____ = _____	
____/____/____	____/____/____	____/____/____	_____ Description _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X _____ = _____	

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples Additional Offense points ☐ Supplemental page points _____ **II.** _____

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 X _____ = _____		Slight	4 X _____ = _____	
Death	120 X _____ = _____		Sex Penetration	80 X _____ = _____	
Severe	40 X _____ = _____		Sex Contact	40 X _____ = _____	
Moderate	18 X _____ = _____				

III. _____

IV. PRIOR RECORD: Supplemental page attached ☐

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
____/____/____	____/____/____	____/____/____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ Description _____	_____	X _____ = _____	
____/____/____	____/____/____	____/____/____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ Description _____	_____	X _____ = _____	
____/____/____	____/____/____	____/____/____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ Description _____	_____	X _____ = _____	
____/____/____	____/____/____	____/____/____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ Description _____	_____	X _____ = _____	
____/____/____	____/____/____	____/____/____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ Description _____	_____	X _____ = _____	

(Level - Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

Supplemental page points _____ **IV.** _____

Page 1 Subtotal: _____

Page 1 Subtotal: _____

V. Legal Status violation = 4 Points

V. _____

VI. Community Sanction violation before the court for sentencing
6 points x each successive violation OR

VI. _____

New felony conviction = 12 points x each successive violation

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points

VII. _____

VIII. Prior Serious Felony = 30 Points

VIII. _____

Subtotal Sentence Points _____

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enforcement Protection ____ x 1.5 ____ x 2.0 ____ x 2.5	Drug Trafficking ____ x 1.5	Grand Theft Motor Vehicle ____ x 1.5	Street Gang (offenses committed on or after 10-1-96) ____ x 1.5	Domestic Violence (offenses committed on or after 10-1-97) ____ x 1.5
--	--------------------------------	---	---	---

Enhanced Subtotal Sentence Points IX. _____

TOTAL SENTENCE POINTS _____

SENTENCE COMPUTATION

If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction.

If total sentence points are greater than 44:

_____ minus 28 = _____ x .75 = _____
 total sentence points lowest permissible prison sentence in months

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the code, exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

_____ maximum sentence in years

TOTAL SENTENCE IMPOSED

☐ State Prison☐ Life

Years

Months

Days

☐ County Jail☐ Time Served☐ Community Control☐ ProbationPlease check if sentenced as ☐ habitual offender, ☐ habitual violent offender, ☐ violent career criminal, ☐ prison release offender, or a ☐ mandatory minimum applies.☐ Mitigated Departure ☐ Plea Bargain

Other Reason _____

JUDGE'S SIGNATURE

3.992(b) CRIMINAL PUNISHMENT CODE SUPPLEMENTAL SCORE SHEET

NAME (LAST, FIRST, M.I.)	DOCKET #	DATE OF SENTENCE
--------------------------	----------	------------------

II. ADDITIONAL OFFENSE(S):

DOCKET#	FEL/MM DEGREE	F.S #	OFFENSE LEVEL	QUALIFY A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____	_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	_____	□□□□	_____	_____	X _____ = _____	

(Level - Points M= 0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

II. _____

IV. PRIOR RECORD

FEL/MM DEGREE	F.S #	OFFENSE LEVEL	QUALIFY A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	□□□□	_____	_____	X _____ = _____	
_____	_____	_____	□□□□	_____	_____	X _____ = _____	

(Level - Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

IV. _____

Reasons for Departure – Mitigating Circumstances

(reasons may be checked here or written on the scoresheet)

- ☐ Legitimate, uncoerced plea bargain
- ☐ The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- ☐ The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- ☐ The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability, and the defendant is amenable to treatment.
- ☐ The need for payment of restitution to the victim outweighs the need for a prison sentence.
- ☐ The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- ☐ The defendant acted under extreme duress or under the domination of another person.
- ☐ Before the identity of the defendant was determined, the victim was substantially compensated.
- ☐ The defendant cooperated with the State to resolve the current offense or any other offense.
- ☐ The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- ☐ At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- ☐ The defendant is to be sentenced as a youthful offender.

Pursuant to 921.0026(3) the defendant's substance abuse or addiction does not justify a downward departure from the lowest permissible sentence .

(RULE 3.992(a) CRIMINAL PUNISHMENT CODE SCORESHEET, 2011)

TABLE 2: Sentencing Guideline Table

		Criminal History Category (Criminal History Points)					
		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
Offense Level							
Zone A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
Zone B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
Zone C	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
Zone D	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

(2008 Federal Sentencing Guidelines Manual, 2011)

CHAPTER 5: SUPREME COURT DEFINES the ROLE of the PROSECUTOR

Within the criminal justice system, the prosecutor is a powerful position with regard to how defendants are processed through the system. Prosecutors represent the state in charging decisions and plea negotiations and take the lead from the initial charging decisions to the sentence recommendation, the prosecutor has the ability to exercise discretion to resolve the case or continue it through to the next phase. Despite the safe guards put in place by the Supreme Court and Constitution, prosecutors still maintain a tremendous amount of power in terms of discretion. Provided they act within these parameters, they have the unbridled ability to make determinations based on their individual discretion.

In 1935, the United States Supreme Court set forth the principle that the primary interest of the prosecutor was to seek justice, not merely the victory. (*Berger v. United States*, 1935) This was just the first in a series of significant cases, which would clarify and define the role of the prosecutor within the American court structure. Additionally, other significant cases that have influenced the prosecutor and will be discussed in this thesis include *Brady v. Maryland*, 1963; *Santobello v. New York*, 1971; *Giglio v. United States*, 1972; *Bordenkircher v. Hayes*, 1978; *Batson v. Kentucky*, 1986. These cases have outlined significant principles regarding behavior of the prosecutor during court proceedings, in pretrial situations as they prepare for trial and in sentencing situations.

Throughout the investigative process, it is possible for the prosecutor's office to uncover evidence, which would be favorable to the defense. This evidence is branded exculpatory evidence. In *Brady v. Maryland*, (1963), the U.S. Supreme Court held "the suppression by the

prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution”. The Supreme Court’s decision gave birth to “The Brady Rule”. Failure to heed the Brady Rule evidence requirements will render the evidence inadmissible. Worth noting, the Brady Rule only applies to evidence that is of material value. The prosecution is not obligated to present any evidence that does not have a material value to the case; therefore lifting some of the burden. (Brady v. Maryland, 1963)

Representing the state’s interest, prosecutors take the lead in making determinations as to the details of all plea negotiations in terms of what deals are offered to the defendant. The U.S. Supreme Court has articulated several important principles with regard to this aspect. In *Santobello v. New York, 1971* - the U.S. Supreme Court heard arguments relating to the prosecutor's breach of agreed recommended sentencing during the bargaining negotiations. During the initial negotiations, the defendant agreed to withdraw his not-guilty plea to two felony counts in exchange for a guilty plea to a lesser crime; provided the prosecutor would not recommend a specific sentence. However, during the sentencing phase of the trial, the prosecutor recommended the defendant face the maximum sentence allowable. The case was appealed to the U.S. Supreme Court, which resulted in the Court vacating the defendant’s sentence. (Santobello v. New York, 1971)

In *Giglio v. United States, 1972*, the U.S. Attorney failed to disclose his promise of leniency to a witness in exchange for his testimony. The U.S. Supreme Court held “neither the Assistant's lack of authority nor his failure to inform his superiors and associates is controlling,

and the prosecution's duty to present all material evidence to the jury was not fulfilled, and constitutes a violation of due process, requiring a new trial". (*Giglio v. United States*, 1972)

Due process was at the forefront of the landmark Supreme Court case, *Bordenkircher v. Hayes*, 1978. In a 5-4 decision, the Court held that the prosecution did not in fact violate the defendant's due process by threatening criminal actions for failing to accept a plea bargain. The case called into question whether or not the prosecution can bring additional charges against a defendant if in fact, they decline to accept the plea bargain offered by the government. The prosecution may exercise such discretion provided there is sufficient evidence to warrant additional charges.

The sixth amendment of the U.S. Constitution guarantees, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury". An important phase in the criminal process is jury selection, which potential jurors endure questioning by the prosecution, the defense and at times, the judge. This examination process is known as a "voir dire". The ultimate goal of such examinations is to seat a fair and impartial jury; one which both sides can come to an agreement. In the event, either side wishes to dismiss a juror, there are two ways to do so; challenged for cause and peremptory challenge. Provided there is a sufficient reason, either side may use an unlimited amount of challenge for cause. Peremptory challenges are generally limited to a specific amount decided on prior to the jury selection process. These challenges are used when there is no specific reason to dismiss the potential juror other than to dismiss a juror that may favor the opposing side. Before 1986, attorneys were without restriction as to how they employed these challenges.

The U.S. Supreme Court case, *Batson v. Kentucky*, 1986, set the precedent that placed restrictions on the prosecution, and evidentially the defense, from exercising their peremptory challenges to dismiss a jury solely based upon their race. In addition, the Court extended its ruling to include gender. (Batson v. Kentucky, 1986)

CHAPTER 6: JURY TRIAL PENALTY

Mirroring the philosophy, “He takes some of my time, I take some of his”, defendants are faced with what is known as the “Trial Penalty”. (Neubauer & Fradella, 2011, 2008) This effect states that those defendants, who choose to exercise their right to have their cases heard by an impartial jury, often face harsher penalties than those defendants who accept the plea bargain offered. (Spohn & Hemmens, 2009) As previously mentioned, the sixth amendment of the Constitution states defendants have the right in all criminal prosecutions, to a speedy and public trial, by an impartial jury. However, this right often leads to the defendant having to make a difficult choice; take a plea and receive a known sentence or go to trial and risk the possibility of a sentence of unknown terms. Despite the fact that there are sentencing guidelines, the prosecutor often has the ability to influence the judge into granting the maximum allowed sentence.

The recent case of the State of Florida v. Charles Darnell and Jaren Hare provides an example of a jury trial penalty. In Sumter County, Florida, Charles Darnell and Jaren Hare faced criminal charges in the death of Hare’s daughter, Shaianna. A python, which was considered the family pet, strangled the child on July 1, 2009. Initially, Darnell and Hare were offered a plea deal, which they would each face ten years in prison in exchange for a guilty plea. The defendants gambled and decided to take their case to a Sumter County Court. On July 18, 2011, within just a few hours, the jury found both defendants guilty of third-degree murder, manslaughter and child neglect. The sentence handed down to each defendant was 12 years in

prison. (Hopper & Loyd, 2011) The only variable within this case was the defendants desire to have a trial. Consequently, their decision cost them two additional years in prison.

CHAPTER 7: METHODOLOGY

Hypothesis of Current Study

Given that the decisions of the prosecutor are generally hidden from public view, and the prosecutor holds a powerful position, therefore it is relatively easy for the prosecutor to abuse the power of his/her position by using discretion. The hypothesis is that prosecutors use their powers of discretion to recommend harsher sentences to defendants who choose to exercise their sixth amendment right to a trial by jury verses accepting a plea bargain offered by the state.

Data Collection Methods

To test this hypothesis, the researcher engaged in an analysis of existing data with respect to only those cases, which received disposition within the given timeframe. Disposition data was obtained from the Clerk of the Court from Orange County, Florida regarding all dispositions within the last 24 months; May 2009 through May 2011. Due to the large amount of data available, the scope was narrowed by specific serious crimes as defined in the Florida State Statutes. The statutes included in the study were located in the Florida State Statutes under TITLE XLVI Crimes, Chapter 782 Homicide: Florida §782.04 Murder, Florida §782.05 Attempted Felony Murder and Chapter 794 Sexual Battery: Florida § 794.011 Sexual Battery; inclusive of their respective subsections. In total, 696 cases factor into the analysis.

Worth noting, the data obtained from the Orange County Clerk of the Court was compiled based on those defendants charged with one or more of the above referenced statutes. In some but not all cases, defendants were charged with multiple crimes in addition to those

included in the study. This additional data were not directly factored into the analysis unless otherwise noted.

With respect to the dispositions related to Chapter 782 Homicide of the Florida State Statutes, special consideration excluded those statutes that pertain to any form of murder where the charge could be related to self-defense, justifiable, vehicular, or vessel homicide. With respect to the dispositions related to Chapter 794 Sexual Battery of the Florida State Statutes, special consideration excluded all statutes outside of 794.011 Sexual Battery and its direct subsections.

Demographically, variability with respect to gender and race does exist, however, it does not factor into consideration when determining the statistical analysis of data. Dispositions for both genders are included and not given special consideration when determining the outcome of the cases. All cases within the study were processed in adult criminal court. While the disposition date ranges from May 2009 through May 2011, the date of offense ranges from 1990 to 2011.

Table 3 displays information regarding dispositions relevant to Florida §782.04, §782.05 as well as all subsections of each. In an effort to preserve the integrity of the data provided, charges were charted in the same manner they were provided. No explanation was given as to why similar charges reflect different state statutes. As shown, the data includes 37 different sub statutes, which comprise the 441 cases within the murder scope. By a large proportion, the charge of First Degree, Premeditated Murder §782.04(1)(A)(1), represents 171, which is 38.8% of the total cases.

TABLE 3: Breakdown of Homicide Charges ^{3 4 5 6}

HOMICIDE CHARGES Orange County, FL (Dispositions - May 2009 to May 2011)				
#	Statute	Description	Qty	% of Total
1	782.04	Murder	20	4.5%
2	782.04(1)	First Degree Murder	44	10.0%
3	782.04(1)(A)	First Degree Murder - Premeditated	7	1.6%
4	782.04(1)(A)(1)	First Degree Murder - Premeditated	171	38.8%
5	782.04(1)(A)(1)-1	First Degree Murder w/ Firearm	6	1.4%
6	782.04(1)(A)(1)-10	First Degree Murder w/ Firearm - Premeditated	1	0.2%
7	782.04(1)(A)(1)-11	Attempted First Degree Murder w/ Firearm	4	0.9%
8	782.04(1)(A)(1)-14	Attempted First Degree Murder w/ Firearm - Discharge/Injury	6	1.4%
9	782.04(1)(A)(1)-17	Murder - 1st Degree w/ Weapon	1	0.2%
10	782.04(1)(A)(1)-2	Attempted First Degree Murder	5	1.1%
11	782.04(1)(A)(1)-2535	Murder Premeditated	4	0.9%
12	782.04(1)(A)(1)-3	Attempted First Degree Murder w/ a Weapon	4	0.9%
13	782.04(1)(A)(2)	First Degree Murder	8	1.8%
14	782.04(1)(A)(2)-2536	Murder While Engaged in Certain Felony Offense	1	0.2%
15	782.04(2)	Second Degree Murder	82	18.6%
16	782.04(2)-11	Attempted Second Degree Murder w/ Weapon	2	0.5%
17	782.04(2)-17	Attempted Second Degree Murder	6	1.4%
18	782.04(2)-18	Second Degree Murder w/ Firearm	2	0.5%
19	782.04(2)-2	Attempted Second Degree Murder w/ Firearm	4	0.9%
20	782.04(2)-2538	Murder Not Premeditated No Felony Office	1	0.2%
21	782.04(3)	Second Degree Murder / Commission of Felony	13	2.9%
22	782.04(3)-1	Second Degree Felony Murder	2	0.5%
23	782.04(3)-2	Second Degree Felony Murder w/ Weapon	1	0.2%
24	782.04(3)-3	Second Degree Felony Murder w/ Firearm	2	0.5%
25	782.04(4)-2540	Murder Not Premeditated During Other Felony	1	0.2%
26	782.04-3	Solicitation to Commit Murder	1	0.2%
27	782.04-6	Attempted Homicide	7	1.6%
28	782.04-7	Attempted Homicide on LEO	2	0.5%
29	782.04-10	Attempted Murder	11	2.5%
30	782.051	Causing Bodily Injury During Felony	5	1.1%
31	782.051(1)	Causing Bodily Injury During Felony	9	2.0%
32	782.051(1)(A)(2)	Attempted First Degree Felony Murder w/ Firearm	1	0.2%
33	782.051(1)-2	Attempted Felony Murder (Enumerated Felony)	2	0.5%
34	782.051(1)-2541	Specific Felony Commit Act Could Cause Death	1	0.2%
35	782.051(1)-3	Attempted Felony Murder (Enumerated) w/ Weapon	2	0.5%
36	782.051(1)-4	Attempted Felony Murder (Enumerated) Firearm	1	0.2%
37	782.051(2)	Causing Bodily Injury During Felony	1	0.2%
		TOTAL	441	

³ Data obtained from Orange County, Florida Disposition date: May 2009-May 2011⁴ Data includes only those cases from adult, criminal court⁵ Data includes cases with date of offense ranging from 1990-2011⁶ Verbiage/Statute copied directly from data. Like descriptions were not combined to protect integrity of the data

Table 4 displays information regarding dispositions relevant to Florida §795.11 as well as all subsections. As shown, the data includes 25 different subsections to the statute, which comprise the 255 cases within the sexual battery scope. With regard to the 255 cases within the study, 77 cases or 30.2% is due to the Florida §794.011(5) - Sexual Battery –Not Likely to Cause Injury.

TABLE 4: Breakdown of Sexual Battery Charges ^{7 8 9 10}

SEXUAL BATTERY CHARGES Orange County, FL (Dispositions - May 2009 to May 2011)				
	Statute	Description	Qty	% of Total
1	794.011	Sexual Battery	6	2.4%
2	794.011(2)	Sexual Battery (Child under 12)	48	18.8%
3	794.011(2)(3)	Attempted Sexual Battery on Child <12 by Person <18	2	0.8%
4	794.011(2)(A)	Attempted Sexual Battery	5	2.0%
5	794.011(2)(A)(B)	Attempted Sexual Battery	2	0.8%
6	794.011(2)(A)-2694	Sex Assault by 18 YOA Older Sex Battery Victim under 12 YOA	2	0.8%
7	794.011(2)(B)	Sexual Battery on Child <12 by Person <18	8	3.1%
8	794.011(2)-2	Sexual Battery	2	0.8%
9	794.011(2)-3	Attempted Sexual Battery	3	1.2%
10	794.011(3)	Sexual Battery w/ Deadly Weapon / Physical Force	50	19.6%
11	794.011(3)-1	Attempted Sexual Battery w/ Deadly Weapon / Force	2	0.8%
12	794.011(3)-2	Attempted Sexual Battery w/ Force w/ Weapon	1	0.4%
13	794.011(3)-2696	Sexual Assault w/ Weapon Sex Battery Victim 12 YOA	1	0.4%
14	794.011(4)(A)	Sexual Battery (Physically Helpless)	4	1.6%
15	794.011(4)(B)	Sexual Battery (Coerces Victim)	2	0.8%
16	794.011(4)(C)	Sexual Battery (Coerces Victim)	3	1.2%
17	794.011(4)(D)	Sexual Battery (Intoxicating Substance)	1	0.4%
18	794.011(4)(E)	Sexual Battery (Mentally Incapacitated)	2	0.8%
19	794.011(4)(F)	Sexual Battery (Physically Incapacitated)	2	0.8%
20	794.011(5)	Sexual Battery –Not Likely to Cause Injury	77	30.2%
21	794.011(5)-2	Attempted Sexual Battery (12 YOA or Over)	2	0.8%
22	794.011(5)-2698	Sexual Assault Victim > 12 YOA Physical Force – No Damage	1	0.4%
23	794.011(8)(A)	Sexual Activity with Child < 18 YOA - Custodian	1	0.4%
24	794.011(8)(B)	Sexual Activity with a Child	27	10.6%
25	794.011(8)(C)-2701	Sexual Assault by 18 YOA Old Custodian Sex Battery Victim <12 YOA	1	0.4%
		TOTAL	255	

⁷ Data obtained from Orange County, Florida May 2009-May 2011⁸ Data includes only those cases from adult, criminal court⁹ Data includes cases with date of offense ranging from 1994-2011¹⁰ Verbiage/Statute copied directly from data. Like descriptions were not combined to protect integrity of the data

CHAPTER 8: FINDINGS

Overview

The findings in this study are segmented into three sections. The first section addresses adjudication of the crimes. In order to determine how the prosecutor uses discretion, it is necessary to have a clear understanding of what percentage of cases are in question. The second section addresses the defendant's right to trial. It is important to note what percentages of defendants who chose to have their cases tried by a jury are acquitted versus those who are adjudicated guilty. The defendants who choose a jury trial are processed through the criminal justice system based on the due process model referenced in Chapter 2. The third section describes the disposition of the cases within the study. It is important to note the relationship between those cases that were adjudicated guilty without a trial as compared to those cases, which were adjudicated guilty by a jury. In the study, correlations are made between the defendant's decision to go to trial verses accepting a plea and the length of sentence.

Adjudication

The term adjudication refers to the decision of the court with regard to the charges against the defendant. As seen in Table 5, the court can issue numerous adjudications. Each decision can lead the defendant to a different path through the criminal justice system. None holds more weight to the defendant, than to be adjudicated guilty by a court of law. By this, the court states the defendant has been found guilty of the charges s/he has been accused.

TABLE 5: Adjudication Nomenclature ¹¹

Term	Definition
Acquitted Jury Trial	The legal certification, by a jury verdict, that an accused person is not guilty of the charged offense.
Adjudicated Guilty	The legal certification, by a court verdict, that an accused person is guilty of the charged offense.
Adjudicated Guilty Jury Trial	The legal certification, by a jury verdict, that an accused person is guilty of the charged offense.
Adjudication Withheld	The court has decided to withhold their ruling.
Consolidated	The act of joining multiple charges.
Dismissed	The legal certification, by a court, that the charges against the accused person be terminated.
Dismissed by Jury Trial	The legal certification, by a jury, that the charges against the accused person be terminated.
Found Incompetent to Proceed	The accused has been found incompetent to continue with the trial.
Found Not Guilty	A jury verdict acquitting the defendant.
Transferred	The case has been transferred to a different jurisdiction.
No Action Taken	No action has been taken with regard to the charges
Nolle Prosequi (NC)	The state has decided to abandon the charges against the defendant.

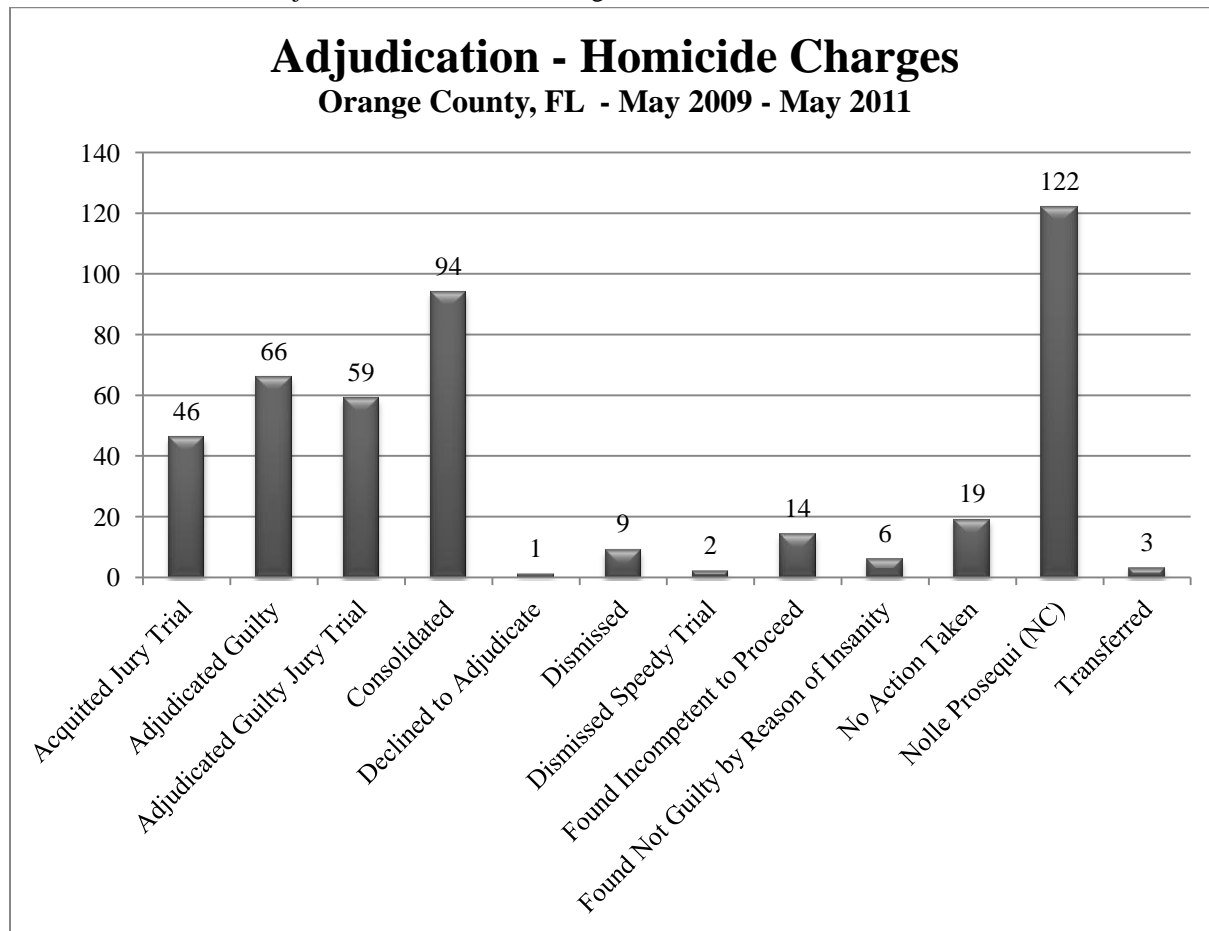
Ch. 782 Homicide: Florida §782.04 Murder, Florida §782.05 Attempted Felony Murder

With regard to Chapter 782 Homicide: Florida §782.04 Murder, Florida §782.05 Attempted Felony Murder, as well as their respective subsections, dispositions were handed down during the period of May 2009 through May 2011 in 441 cases. As noted in Table 6, there were 12 different dispositions issued. The data concludes 111 or 25.2% of the cases actually went to trial. Whether adjudicated guilty, acquitted or found not guilty by reason of insanity, these individuals exercised their rights to a jury trial; which is an exercise in the due process

¹¹ All legal definitions are drawn from Black's Law Dictionary.

model. The Due Process Model, referenced earlier, operates under the philosophy that a defendant's right to due process is more important than how swift their case processes through the criminal justice system. Because of the extent of this process, these cases are often in the system much longer, therefore cost the state more money to prosecute. The most alarming statistic is 27.7% or 122 cases were adjudicated as Nolle Prosequi. Nolle Prosequi is a legal term meaning the state has abandoned the charges and will no longer seek to prosecute. This can be due to a variety of reasons, however of the 122 cases that were nolle pros'ed, 54% or 66 cases involved a plea bargain; meaning the defendant negotiated a settlement in exchange for a guilty plea. Due to the lack of a speedy trial, two cases were dismissed. This is a significant fact in that two alleged murders were set free, due to fact the state did not meet the requirements for a speedy trial; which is 175 days from the date the defendant was charged. In 14 cases or 3.2% of the cases, the defendant was found incompetent to proceed. These cases will be put aside until the defendant is found to be competent by the court. Prosecutorial discretion was directly influenced in 63.9% or 282 cases. These cases include plea bargains, consolidations, and nolle prosequi. The prosecutor was less instrumental in the remaining 159 homicide cases. Consolidated cases are those cases that are merged with other charges the defendant may have under a different case number. Due to the date range within this specific study, those cases may or may not be included under the alternative case number. However, they are important in that 21.3% or 94 cases originally charged as murder were consolidated into other cases. This point is an example of the Crime Control model spoken to earlier. In an effort to streamline the cases in and out of the system, the prosecutor will utilize their discretion to simplify the caseload.

TABLE 6: Breakdown Adjudication – Homicide Charges ^{12 13}



Ch. 795 Sexual Battery, Florida §795.11

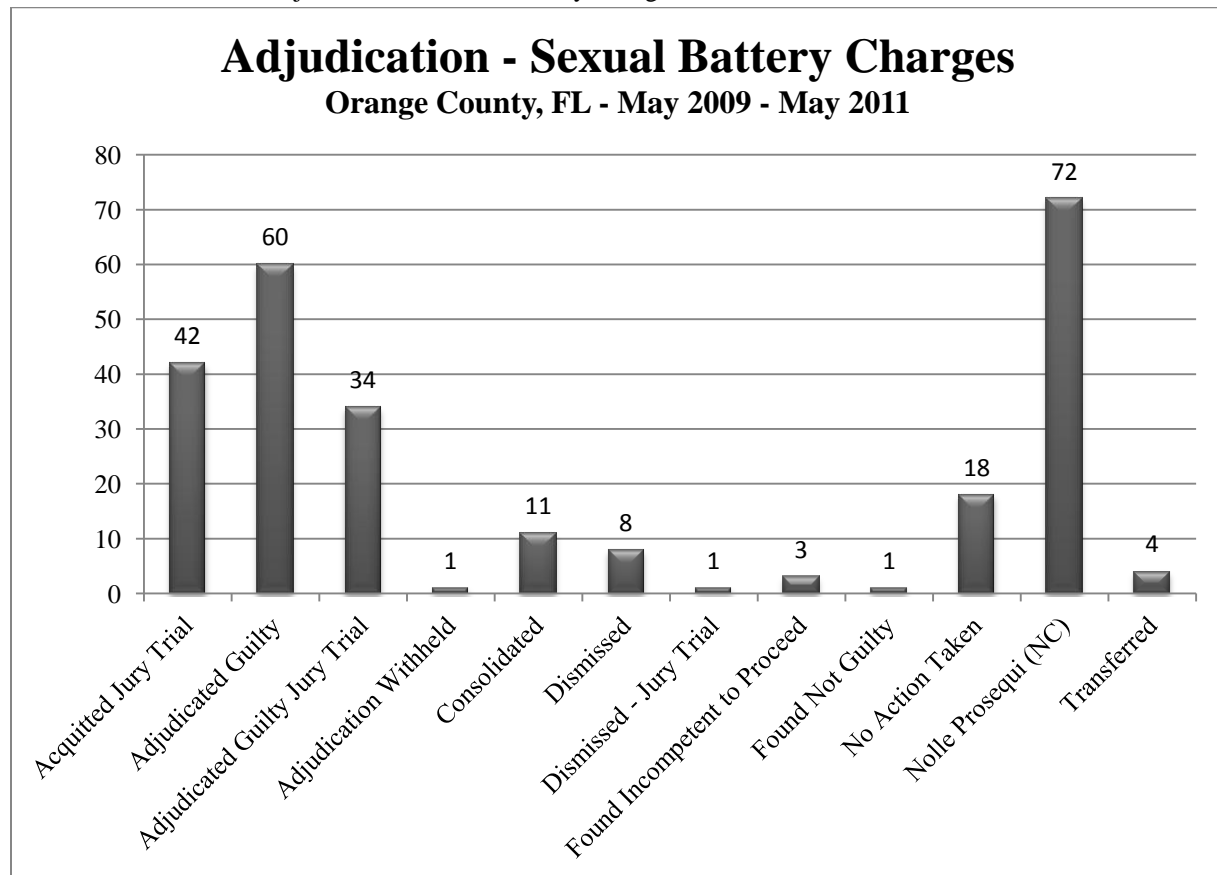
With regard to Chapter 795 Sexual Battery, Florida §795.11 and its specific subsections, dispositions were handed down during the period of May 2009 through May 2011 in 255 cases. As noted in Table 7, there were 12 different dispositions issued. The study draws some interesting results when analyzing this specific type of serious crime. The largest categories within this statute are those cases that actually went to trial; the statistics indicate 30.2% or 77

¹² Data comprised of adjudications between May 2009–May 2011.

¹³ Actual date of offense ranges from 1990-2011

cases comprised this category. Again, these defendants chose to exercise their right to a trial, which cost the state time and expense. Although, not the largest percentage, there were 25.2% or 72 cases adjudicated as nolle prosequi. This is important to note because in a little more than a quarter of all sexual battery cases, the prosecutor decided not to pursue. This can be due to a variety of reasons; however, of the 72 cases that were nolle pros'ed, 83.3% or cases involved a plea bargain. There were a total of 9 cases or 3.5% dismissed; 8 by the court and 1 by a jury. Cases are dismissed when it is determined that the state has not proven its case, most commonly due to a lack of evidence or witness issues. With respect to consolidation, there were 4.3% or 11 cases merged with additional cases the defendant had within the system. Due to the date range within this specific study, those cases may or may not be included under the alternative case number. The most important statistic within this statute deals with prosecutorial discretion. A total of 56.1% or 143 cases were influenced by the prosecutor in some fashion; either through a plea bargain, consolidation or nolle prosequi. Statistically, this shows that the prosecutor plays an influential role in over half of the defendants charged with sexual battery. This is prime example of the Crime Control Model.

TABLE 7: Breakdown Adjudication – Sexual Battery Charges ^{14 15}



When comparing how cases were adjudicated between Chapter 782 Homicide: Florida §782.04 Murder, Florida §782.05 Attempted Felony Murder and Chapter 795 Sexual Battery: Florida §795.11, the study provides interesting statistics. Overall, prosecutorial discretion is utilized more often within Murder or Attempted Murder cases at 63.9% than it is in Sexual Battery Cases at 56.1%. A further breakdown of how the prosecutor uses his/her discretion shows how the numbers factor. The study indicates there is a 10% variance in defendants who accept plea deals; Sexual Battery, 25.9% versus Murder or Attempted Murder, 15.0%. Prosecutorial discretion with respect to nolle prosequi, or cases the prosecutor chooses not to

¹⁴ Data comprised of adjudications between May 2009 – May 2011.

¹⁵ Actual date of offense ranges from 1994-2011

pursue is approximately similar, Sexual Battery, 28.2% versus Murder or Attempt Murder, 27.2%. More cases are consolidated when charged with Murder or Attempted Murder, 21.3% than charged with Sexual Battery, 4.3%.

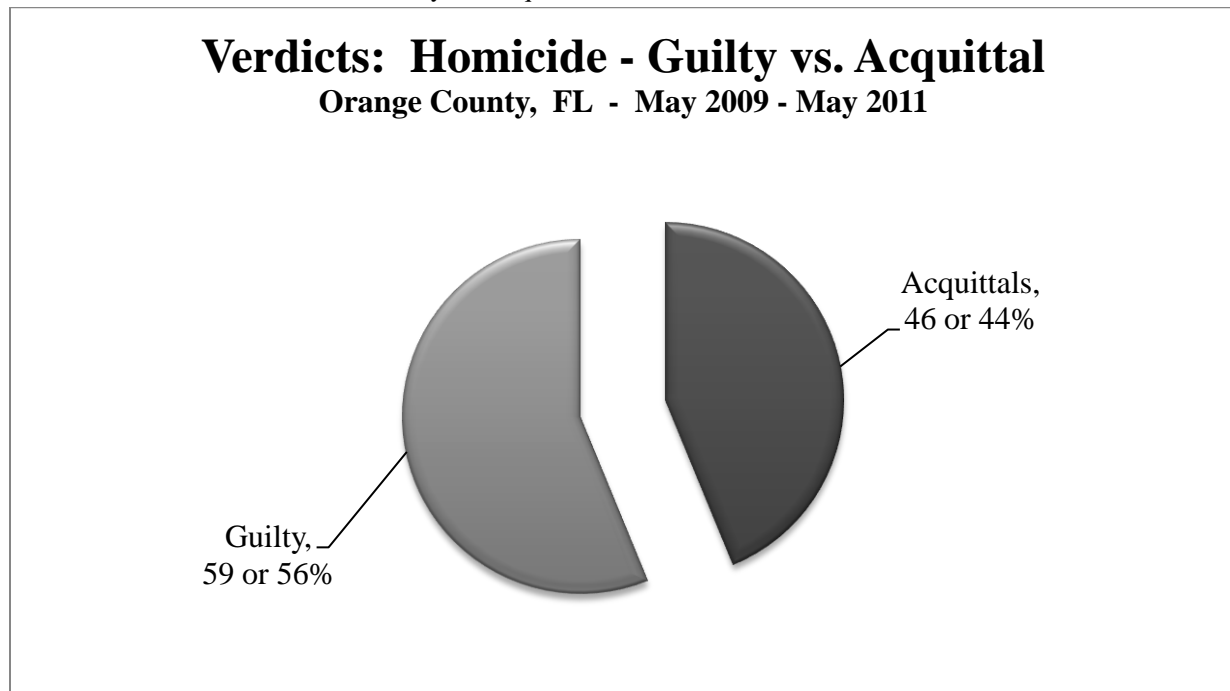
Trial – Guilty verses Acquittal

Due to the vast influx of cases that enter the criminal justice system on a daily basis, the State would prefer to close cases as quickly as possible. Therefore, it is in the State's best interest to operate under the Crime Control model; get the cases in, settled and closed. As discussed in Chapter 6, failure to accept the plea bargain offered by the State puts the defendant in an unsettling position. They must carefully weigh whether they wish to “gamble” on the fact that the State cannot prove beyond a reasonable doubt they are guilty of the crimes for which they have been accused.

Ch. 782 Homicide: Florida §782.04 Murder, Florida §782.05 Attempted Felony Murder

As seen in Table 8, an analysis of the data shows 105 out of 441 cases related to the charge of murder went to trial. There were 56% or 59 cases adjudicated guilty, where 44% or 46 cases were acquitted. The difference between those adjudicated guilty and those acquitted were 12 cases in favor of a guilty verdict. The marginal difference is only 11.4%. A point to consider is that nearly half of the defendants who made the decision to go to trial were exonerated.

TABLE 8: Verdicts: Homicide – Guilty vs. Acquittal ^{16 17}



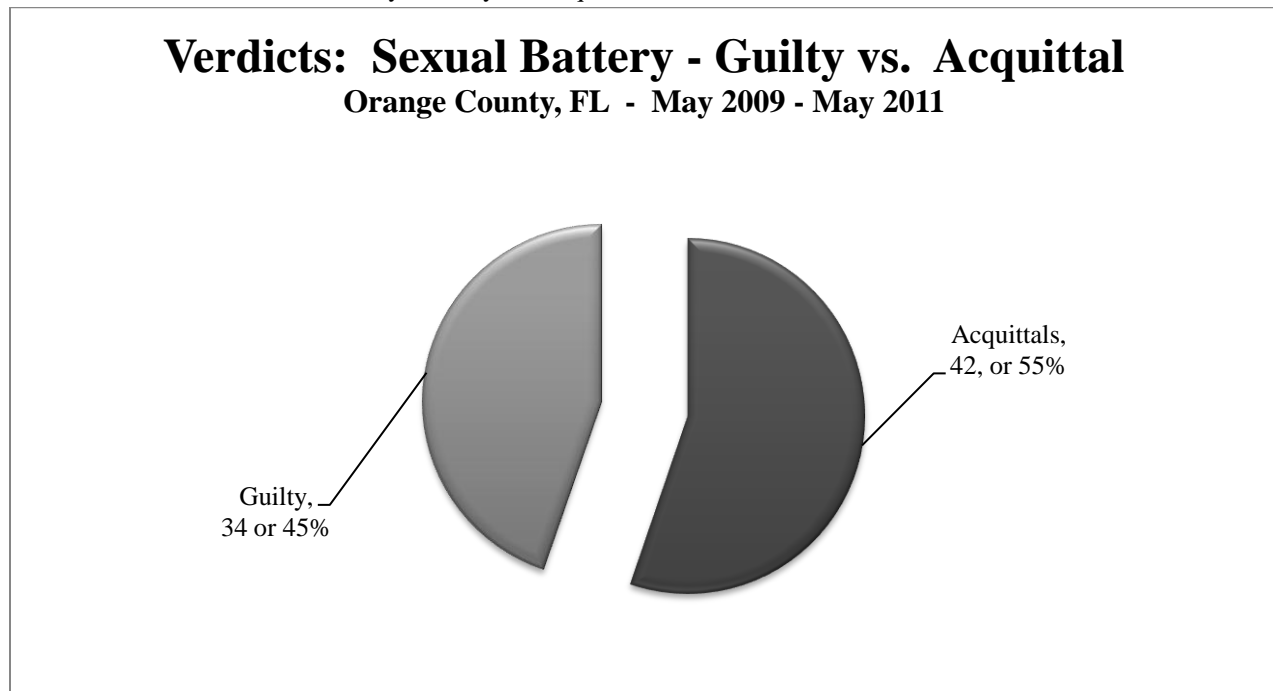
Ch. 795 Sexual Battery, Florida §795.11

With regard to Chapter 795 Sexual Battery, Florida §795.11 and its specific subsections, as seen in Table 9, an analysis of the data shows a total of 76 out of 255 cases related to the charge of sexual battery went to trial. There were 45% or 34 cases adjudicated guilty, where 55% or 42 cases were acquitted. The difference between those adjudicated guilty and those acquitted were eight cases in favor of an acquittal. The marginal difference is only 10.5%. Interestingly, a significant amount of defendant's who opted to have their case heard by a jury were exonerated.

¹⁶ Data reflects dispositions between May 2009–May 2011

¹⁷ Data obtained from Orange County, Florida

TABLE 9: Verdicts: Sexual Battery – Guilty vs. Acquittal ^{18 19}



The findings are transposed between the two charges; murder and sexual battery. A conclusion can be drawn in that although the difference is slight; defendants have a greater chance of acquittal if they are charged with sexual battery than if they are charged with murder.

Disposition

The term disposition refers to the final determination made by the court with regard to the charges against the defendant. Once the court has adjudicated the defendant guilty, it will hand down the disposition, also known as the sentence. There are several different types of sentences available; such as fines, probation, jail or prison.

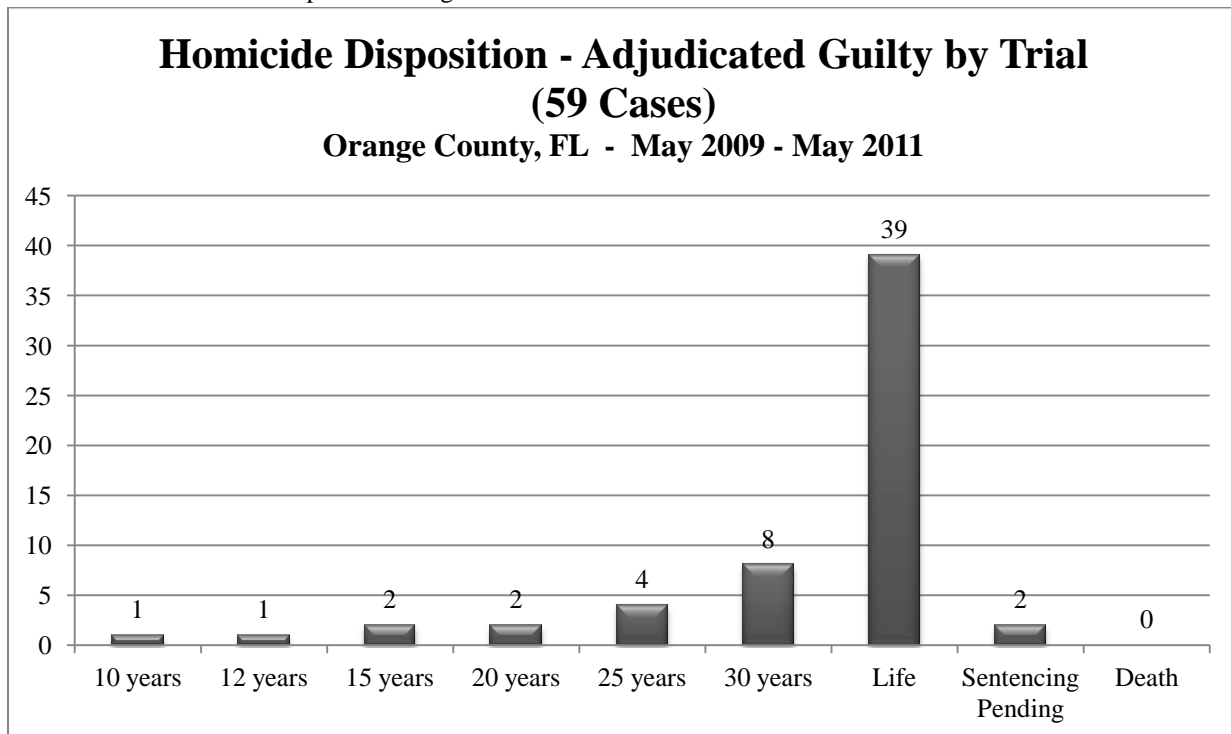
¹⁸ Data reflects dispositions between May 2009 – May 2011

¹⁹ Data obtained from Orange County, Florida

Ch. 782 Homicide, Florida §782.04 Murder, Florida §782.05 Attempted Felony Murder

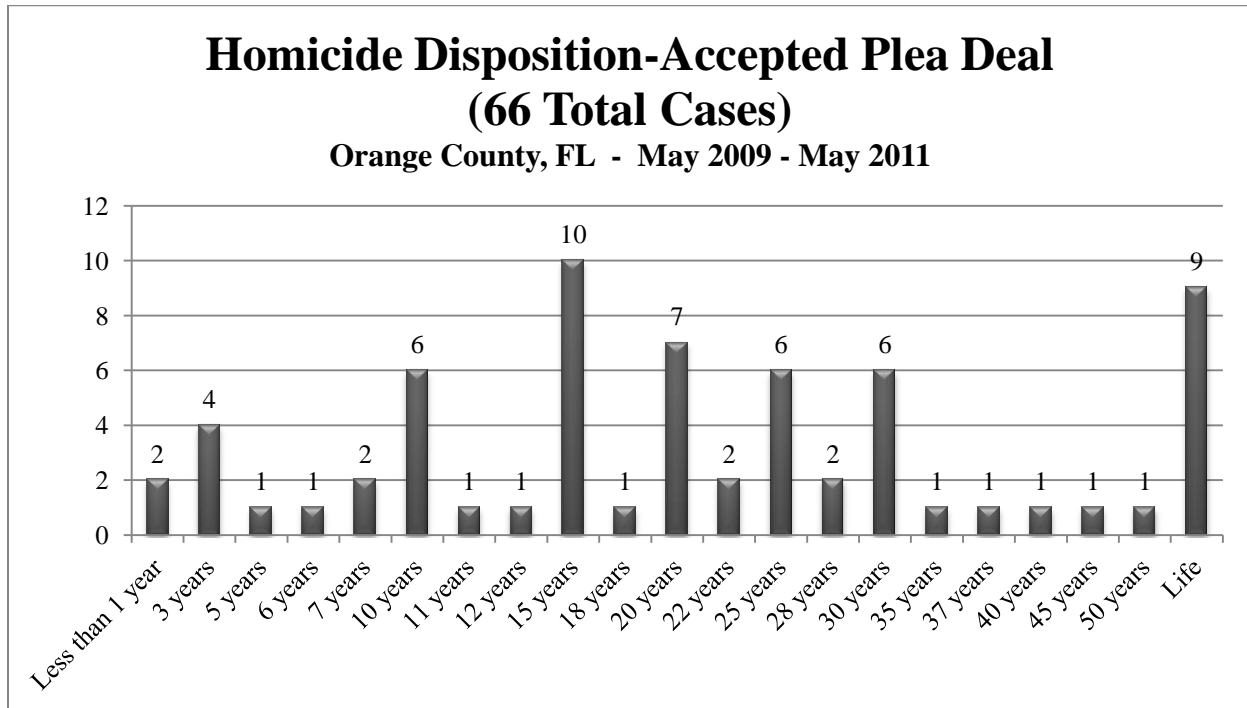
Within the study, there were 59 homicide cases, which were adjudicated guilty by a jury. As seen in Table 10, the disposition range spanned from 10 years to life in prison. At the time the study was conducted, the dispositions were pending by the court in two cases. Zero homicide cases received the death penalty. By a clear majority, life in prison was the most frequent disposition, 66.1% or 39 cases. There were two cases pending disposition at the time the research was conducted.

TABLE 10: Homicide: Disposition Length of Trial Cases



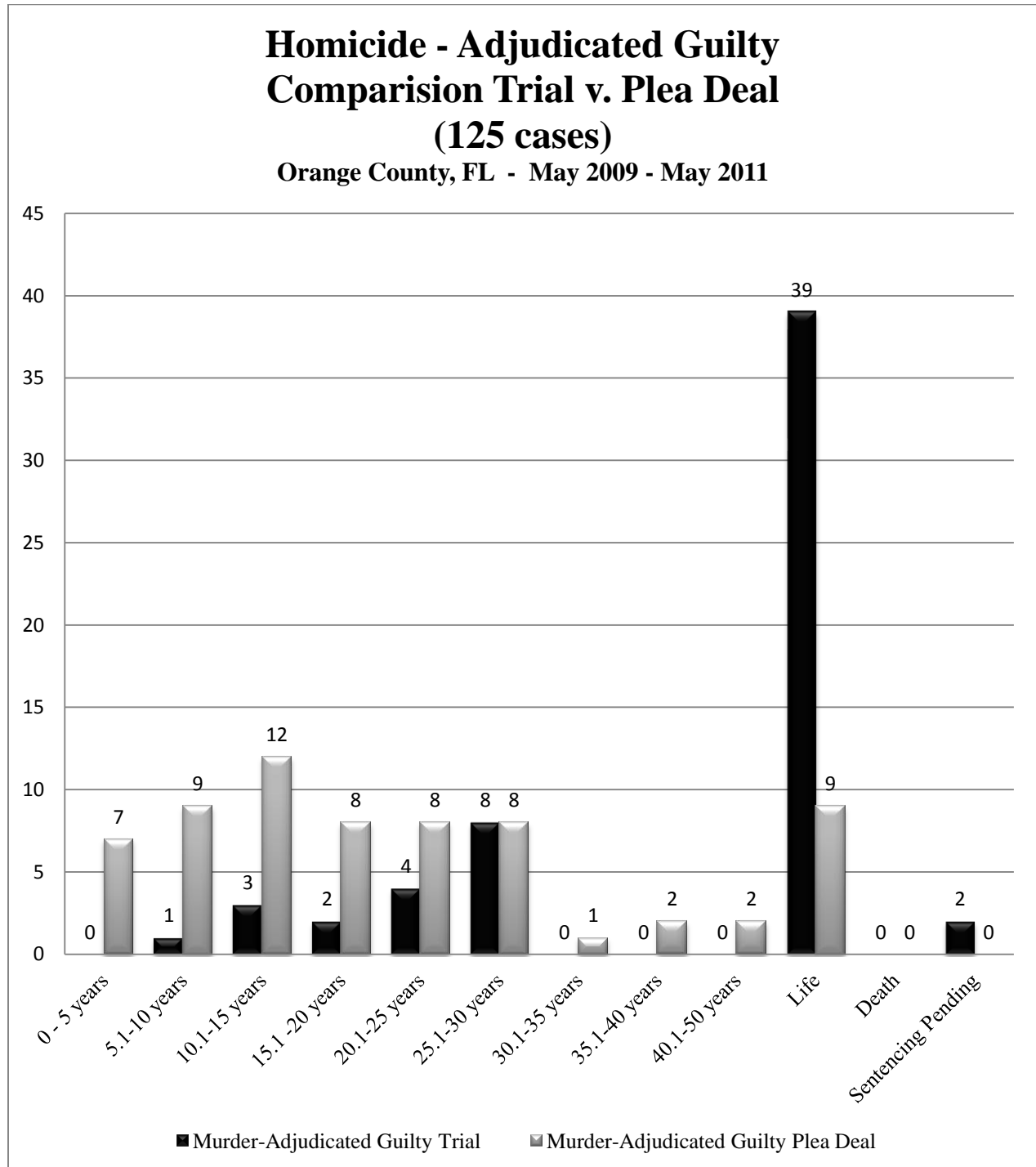
Within the study, there were 66 cases, where the defendants plead guilty to the charges. As seen in Table 11, the disposition range spanned from less than 1 year to life in prison. No cases received the death penalty as a resulting disposition. By a slight majority, 15 years in prison was the most frequent disposition, 6.5% or 10 cases.

TABLE 11: Homicide: Disposition Length of Plea Deal Cases



In total, there were 125 cases in which the defendant was adjudicated guilty through either a plea bargain or a trial, with 59 trial cases and 66 plea bargain cases. Relatively equal, the results are vastly different. As seen in Table 12, when comparing the dispositions of the defendants who accepted a plea bargain and those that went to trial, there is a significant difference in final sentencing. Only 28.7% or 19 cases received a disposition of 30 years or greater if they accepted a plea bargain; whereas, 71.2% or 47 of trial cases received a disposition of 30 years or greater. Without accepting a plea, an overwhelming majority of sentences for trial defendants was life in prison. Interestingly, 10 cases received a disposition of less than 10 years; all were plea bargain cases. When reviewing the dispositions, special notation was made that of the 105 guilty verdicts, zero defendants received the death penalty; which is alarming in that the penalty for the taking of a life unjustifiably was only time in prison.

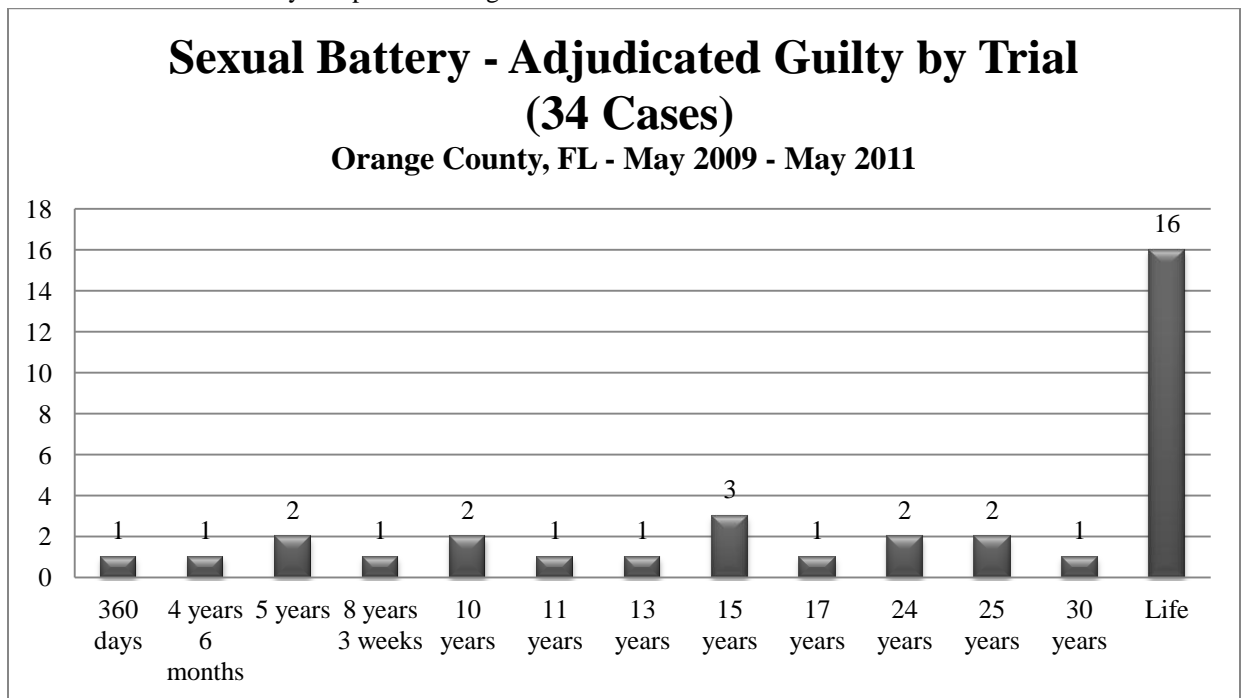
TABLE 12: Homicide: Comparison Trial v. Plea Deal



Ch. 795 Sexual Battery, Florida §795.11

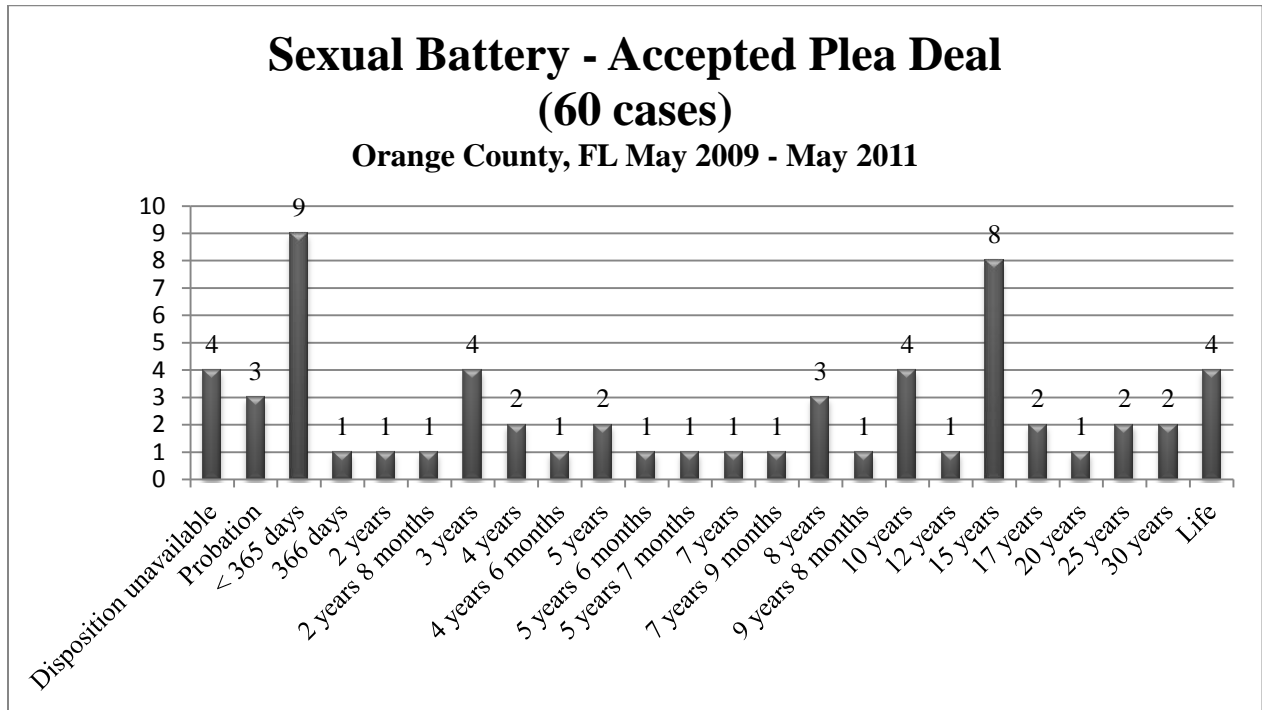
With regard to Sexual Battery, there were 34 cases in which the defendant was adjudicated guilty by a jury trial. As seen in Table 13, there was a wide-ranging span of dispositions, 13 in total. The majority, 47.0% or 16 defendants received life in prison. However, one defendant received less than one year.

TABLE 13: Sexual Battery: Disposition Length of Trial Cases



Within the study, the defendant accepted a plea bargain in 60 cases. As noted in Table 14, there were 24 different dispositions ranging from probation to life in prison. By one case, the majority, 15% or 9 defendants received less than one year in jail. 13.3% or 8 defendants receiving 15 years in prison follow this closely. There were 0.6% or 4 cases, in which the disposition was unavailable.

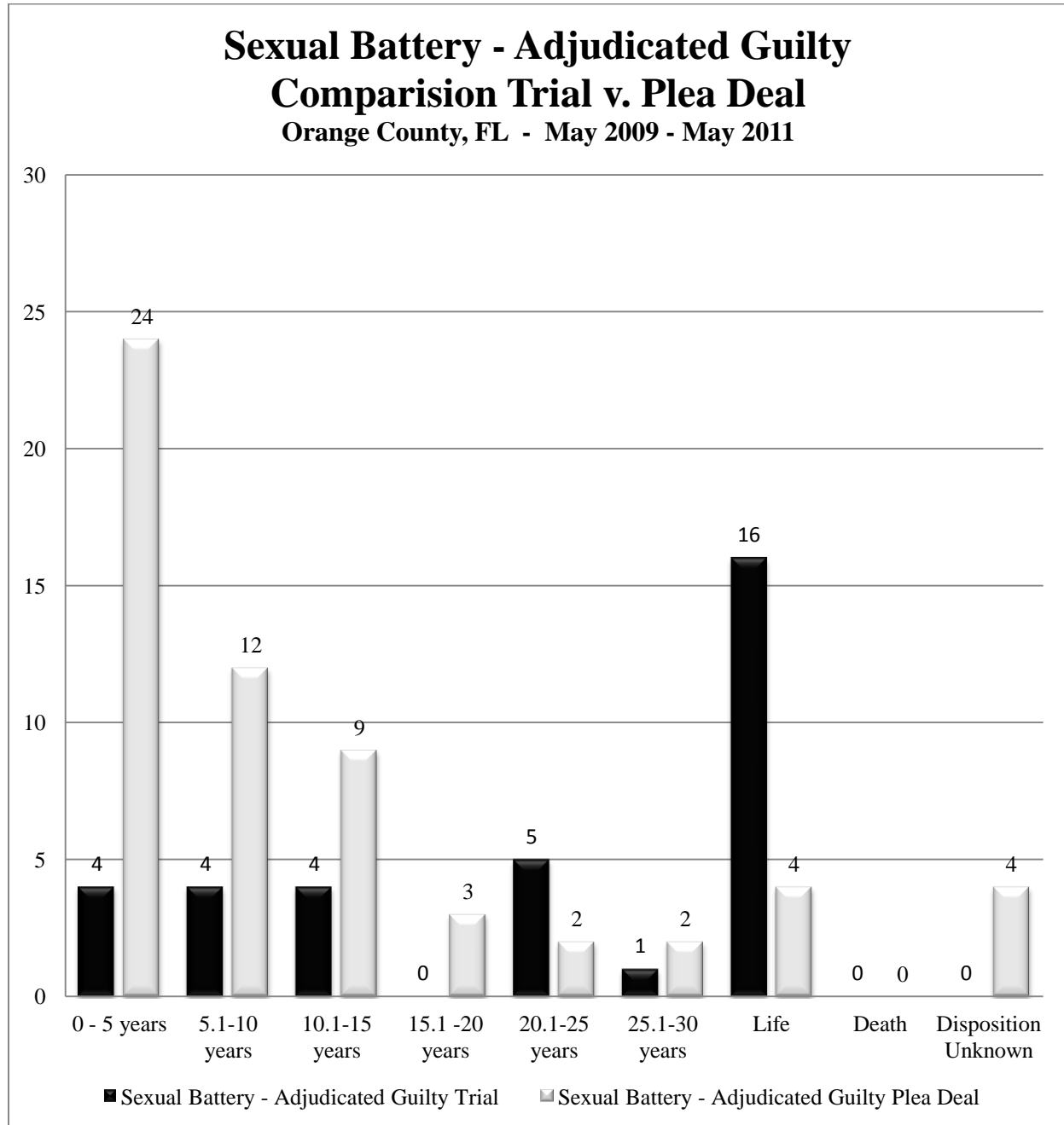
TABLE 14: Sexual Battery: Disposition Length of Plea Deal Cases



With regard to Sexual Battery, as noted in Table 15, there were 94 cases in which the defendant was adjudicated guilty through either a plea bargain or a trial, with 35 trial cases and 60 plea bargain cases. The study reveals 60% more sexual battery cases accept plea bargains than risk going to trial. When comparing the dispositions of the defendants who accepted a plea bargain and those that went to trial, there is a significant difference in final sentencing. Of the defendants who went to trial, 45.7% or 16 cases received a life sentence compared to only .06% or 4 cases; a variance of 45.1% of those who accepted a plea bargain. This statistic provides validity to the theory prosecutors have a wide latitude of discretion when it comes to recommending sentencing. The range of dispositions for plea deal defendants is nearly double than those who opted for trial. In comparing those defendants who received a disposition of less

than four years, there is a drastic difference between the two categories; 31.6% or 9 defendants (plea bargain) verses 0.2% or 1 defendant (trial).

TABLE 15: Sexual Battery: Comparison Trial v. Plea Deal



CHAPTER 9: CONCLUSION

The purpose of this study was to examine prosecutorial discretion with respect to legitimate use of discretion versus abuse of power. To achieve this purpose, disposition data were obtained from the Clerk of the Court from Orange County, Florida; May 2009 through May 2011. In order to obtain a manageable number of cases, the scope was limited to only those cases in which the defendant was charged with crimes relating to specific chapters with the Florida State Statutes; Chapter 782 Homicide and Chapter 795 Sexual Battery Florida. Special consideration was taken to eliminate the sections of Chapter 782 – Homicide to exclude those statutes that pertained to self-defense, justifiable, vehicular, or vessel homicide. The two remaining sections are §782.04 – Murder, §782.05 – Attempted Felony Murder and their respective subsections combined with §795.11 Sexual Battery and the respective subsections were analyzed. In total, 696 cases were analyzed. Special notation should be taken when considering the analysis: whereas several cases exhibited multiple charges, dispositions were specific to the statutes included in the study. No consideration was given to the dispositions of the additional charges. Due to the sentence structure within Florida, it is possible some cases received dispositions based on aggravating circumstances. An analysis of data was completed solely on the disposition for the statutes referenced above.

Notations were made and separated, with regard to the adjudications, in an effort to identify which cases the prosecutor's discretion directly influenced. The lengths of dispositions were analyzed in an attempt to determine if there is a noticeable difference in length of sentence between plea bargain defendants and trial defendants. The analysis demonstrated a

distinct difference in length of sentence. The defendants who opted for a jury trial received a significantly longer prison sentence when compared to the defendants who accepted a plea bargain.

The data within this study was bound by certain limitations. With regard to those cases in which the prosecutor utilized nolle prosequi, data was unavailable as to the specific reasoning behind the decision. As previously stated in Chapter 4, nolle prosequi is utilized for a variety of reasons. Without knowing the specific reasoning behind such adjudication, an assumption can only be made as to the reasoning behind such decision. The results however, can be utilized as a foundation to warrant further research. In order to determine a more thorough expansion on the use of discretion, research would need to be conducted on each case independently.

The status of whether or not private counsel or a public defender represented the defendant was not a consideration. Further research may be necessary to determine if those defendants represented by private attorney fared better than those represented by a public defender.

Additionally, when analyzing the disposition data, no weight was given to those cases in which the defendant was found guilty of multiple charges. As explained in Chapter 4, the prosecutor is required to fill out a “Criminal Punishment Code Score Sheet” to determine the appropriate sentencing for the defendant. If the defendant was convicted on multiple charges, their score would be higher, thus resulting in an extended disposition. Furthermore, dependent upon the type of additional charge

The conclusion drawn from the statistical results presented in this study supports the hypothesis that defendants do in fact; receive a harsher sentence if they choose to go to trial.

Whereas the prosecutor has the ability to highly influence the charges against the defendant, therefore s/he has the power to control the sentence handed down from the court. In *United States vs. Minker*, (1956), the court stated, "Many citizens because of their respect for what only appears to be a law are cunningly coerced into waiving their rights due to ignorance." (*United States vs. Minker*, 1956). This statement is a powerful in that many citizens are not fully aware of their rights. Facing an uncertain future, defendants are more willing to accept a plea bargain in hopes of receiving a lesser sentence. The psychology behind their reasoning has much to do with the power the prosecutor holds. Defendants are more likely to accept the word of the prosecutor based on the belief that a man/woman in such a powerful position would not mislead them.

The Illinois Court of Appeals said it best when they stated the following:

"The District Attorney ...is charged by law with large discretion in prosecuting offenders against the law. He may commence public prosecutions....and may discontinue them when, in his judgment the ends of justice are satisfied." The discretion that is used in determining when the ends of justice are satisfied is significant power to entrust in one person, and it is power that must be transparent for government trust to remain true. (Wabash, St. L. & P. RY. Co. v. People of State of Illinois, 1886)

APPENDIX A: STEPS OF CRIMINAL PROCESS

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Crime	Any violation of the criminal law.
Arrest	The physical taking into custody of a suspected law violator.
Initial Appearance	The accused is told of the charges, bail is set and a date for the preliminary hearing is set.
Bail	Guarantee that a released defendant will appear at trial.
Preliminary Hearing	Pretrial hearing to determine whether probable cause exists to hold the accused.
Charging Decision	Formal criminal charges against the defendant, stating what criminal law was violated.
Grand Jury	A group of citizens who decide whether persons accused of crimes should be charged.
Arraignment	The defendant is informed of the pending charges and is required to enter a plea.
Plea Negotiations	The defendant pleads guilty with the expectation of receiving some benefit
Trial	A fact-finding process using the adversarial method before a judge or a jury.
Sentencing	Punishment imposed on a defendant found guilty of violating the criminal law. Also known as disposition.
Appeal	Review of the lower-court decision by a higher court.

(Neubauer & Fradella, 2011, 2008)

APPENDIX B: COURT PLEADING: WAIVER OF JURY TRIAL

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA
CASE NO: _____
STATE OF FLORIDA, DIVISION: _____

Plaintiff,
vs.
Defendant.

_____ /

WAIVER OF JURY TRIAL

Comes now, _____, defendant in this cause and
waives trial by jury of the issues made by the charge and defendant's plea of not guilty and
requests that said issues be tried to the court sitting without jury.

In making this waiver, defendant acknowledges that:

The defendant is represented by attorney _____, and that
this waiver is made after full discussion with counsel; the defendant understands the right under
the Constitution of the State of Florida and the United States to have an impartial jury determine
the truth of the charge made in the information and to pass upon the guilt or innocence of
defendant.

Defendant further represents to the court that the waiver is made freely and voluntarily
and that the defendant has not been subjected to any threats, pressure or coercion to induce this
waiver, nor has the defendant been assured of any leniency or expectations of reward in
consideration of this waiver of jury trial.

Dated this _____ day of _____, 19__.

DEFENDANT

DEFENDANT

Comes now the State of Florida by and through _____ and
consents to the waiver of trial by jury.

ASSISTANT STATE ATTORNEY
By _____

APPENDIX B: COURT PLEADING: WAIVER OF JURY TRIAL continued

ORDER

Defendant having entered this waiver of trial by jury in this cause, the court finds defendant's waiver to have been knowingly, understandingly, and intelligently made, and the defendant had the advice and counsel of a competent lawyer and that the state consents to the waiver of trial by jury; wherefore, it is

Ordered and Adjudges that this cause shall be tried to the court sitting without jury.

DONE AND ORDERED in chambers in Orlando, Orange County, Florida,
this _____ day of _____, 19____.

Circuit Court Judge

APPENDIX C: COURT PLEADING: PLEA AGREEMENT

APPENDIX C: COURT PLEADING: PLEA AGREEMENT

STATE OF FLORIDA

IN THE CIRCUIT COURT, IN AND FOR
ORANGE COUNTY, FLORIDA
CASE NO. _____ DIV. _____

Plaintiff

v.

Defendant

_____ /

PLEA(S)

1. I, _____, defendant, withdraw my pleas(s) of not guilty and enter plea(s) of:

- () Guilty () Nolo Contendere to _____ F.S. _____
() Guilty () Nolo Contendere to _____ F.S. _____
() Guilty () Nolo Contendere to _____ F.S. _____

2. I, understand that if the Court accepts the plea(s), I give up my right to a trial, and to the following rights: (1) to have a jury determine whether I am guilty or not guilty, or a hearing before a judge if charged with violation of probation; (2) to see and hear the witnesses testify, and to have my lawyer question them for me; (3) to subpoena and present witnesses and items of evidence in my defense, and to present any defense I might have to the jury; (4) to testify or to remain silent; and (5) to require the prosecutor to prove my guilt by admissible evidence beyond a reasonable doubt, or to the satisfaction of the Court's conscience if charged with violation of probation, before I can be found guilty. I further understand that I give up my right to appeal all matters except the legality of my sentence or this Court's authority to hear this case. My lawyer has explained to me what an appeal is.

3. I understand that a plea of not guilty denies that I committed the crime(s), a plea of guilty admits that I committed the crime(s), and a plea of nolo contendere says that I do not contest the evidence against me. I understand that if the Court accepts my plea(s) there will be no trial and the Court will impose sentence(s) based upon my plea(s).

4. I have read the information/indictment/warrant in this case and I understand the charge(s) to which I enter my plea(s). My lawyer has explained to me the maximum penalty for the charge(s), the essential elements of the crime(s), and possible defenses to the crime(s). I understand these things. I also understand that if I am on parole, my parole can be revoked and I can be returned to prison to complete that sentence; if I am on probation, my probation can be revoked and I can receive a separate sentence up to the maximum on the probation charge in addition to the sentence imposed in the present case(s). I understand that if I am not a citizen of the United States, I may be deported.

5. No one has promised me anything to get me to enter the plea(s) except as stated herein. The prosecutor has recommended the following:

The Judge has promised: _____

I understand the maximum penalties for the charge(s) to be _____ plus maximum fine(s) of _____ plus costs up to \$500 and restitution, if applicable.

APPENDIX C: COURT PLEADING: PLEA AGREEMENT continued

6. I understand that, in addition to the terms in Paragraph 5, I might also be placed on probation and be required to pay \$50 per month for costs of supervision.

7. No one has pressured or forced me to enter the plea(s). I am entering the plea(s) because
() I believe I am guilty. () I believe it is in my own best interest. I enter the plea(s) voluntarily of my own free will.
27-38 (3/91)

8. I give up my right to have the prosecutor recite to the Court the facts showing my guilt before acceptance of the plea(s).

9. I understand my sentence will be imposed under the Sentencing Guidelines. A guideline cell will be determined based upon my prior record which I have truthfully disclosed to my attorney. I understand that I will not be permitted to withdraw my plea(s) if the correct guideline cell is other than what is presumed at this time. The court can exceed this guideline cell and impose up to the maximum term of incarceration and maximum fine for each offense by stating reasons supported by a preponderance of the evidence. If the Sentencing Guideline is exceeded I will have the right to appeal my sentence.

10. I understand that if I have two or more prior felonies I may receive a sentence of double the time in Paragraph 5, of a life sentence if the maximum is 30 years, in addition to the fine(s).

11. I understand and agree that if the Court permits me to remain at liberty pending sentencing I must notify my lawyer and bondsman or Pre-Trial Release officer of any change of my address or telephone number, and if the Court orders a Pre-Sentence investigation (PSI) and I willfully fail to appear for an appointment with the probation officer for the PSI interview, the Court can revoke my release and place me in jail until the PSI interview has been completed or until my sentencing.

12. I am not under the influence of any drug, medication, or alcohol and I am not suffering from any physical or mental problems at this time which affect my understanding of this plea(s). My education consists of the following:

13. I have read every word in this written plea, have discussed it with my lawyer, and fully understand it. I am fully satisfied with the way my lawyer has handled this case for me. He has done everything I have asked him to do.

SWORN TO, SIGNED AND FILED IN OPEN COURT in the presence of Defense Counsel and Judge
this _____ day of _____ 19_____.

LINDA W. CHAPIN, Clerk of the
Circuit Court and County Court

By _____
Deputy Clerk in Attendance

Defendant's Signature

Address _____

Telephone _____

Social Security No. _____

APPENDIX C: COURT PLEADING: PLEA AGREEMENT continued

CERTIFICATE OF DEFENDANT'S ATTORNEY AND PROSECUTOR

I, Defendant's Counsel of Record, certify that: I have discussed this case with defendant, including the nature of the charges, essential elements of each, the evidence against him/her of which I am aware, the possible defense he/she has, the maximum penalty for the charge(s) and the right to appeal. No promises have been made other than as set forth in this plea or on the record. I believe the defendant fully understands this written plea, the consequences of entering it, and that the plea is entered of the defendant's own free will.

I, the Prosecutor, consent to the plea(s) to lesser charges, if applicable, and confirm the representations in Paragraph 5.

Defendant's Attorney

Assistant State Attorney

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